ARKANSAS SUPREME COURT

No. 08-1292

	Opinion Delivered **April 2, 2009**
PATRICK L. SHERMAN Appellant v. LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION Appellee	PRO SE MOTIONS FOR APPOINTMENT OF COUNSEL AND FOR SANCTIONS UNDER RULE 11 [CIRCUIT COURT OF JEFFERSON COUNTY, CV 2008-630, HON. ROBERT H. WYATT, JR., JUDGE] APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 1995, appellant Patrick L. Sherman was found guilty by a jury of fleeing, aggravated assault and two counts of first-degree battery, and sentenced to an aggregate term of 480 months' imprisonment. We affirmed. *Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996).

In 2008, in the circuit court of the county where he was incarcerated at that time, appellant filed a petition for writ of habeas corpus as well as various motions related to the petition. The court denied the petition and motions without a hearing, and appellant has lodged a pro se appeal here from the order of denial.

Now before us are appellant's pro se motions for appointment of counsel and for recovery of damages and fees as a sanction against the State under Arkansas Rule of Civil Procedure 11.[1] As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An

[1]The substance of the motion appears to also seek sanctions pursuant to Arkansas Rule of Appellate Procedure–Civil 11.

appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

An appellant is entitled to a writ of habeas corpus only where he demonstrates that the commitment order is invalid on its face or that the convicting court lacks jurisdiction. Ark. Code Ann. §§ 16-112-101 to -123 (Repl. 2006); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). To do so, he must make a "showing, by affidavit or other evidence, [of] probable cause to believe" that he is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1); *Friend v. Norris, supra.*

The event that gave rise to the charges in this matter also resulted in charges being filed against appellant in municipal (now district) court.[2] Appellant entered a plea of guilty to the municipal-court misdemeanor charges, and then claimed that those charges were lesser-included offenses of the felony charges filed against him in circuit court. In his direct appeal, he sought reversal of the judgment on the felony charges based upon double jeopardy, res judicata, collateral estoppel and statutory prohibition. *Sherman v. State, supra.*

Appellant's habeas petition filed in this matter centered around the same double-jeopardy argument. However, a habeas corpus proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. *Friend v. Norris, supra* (citing *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000)). The burden was on appellant to establish entitlement for a writ of habeas corpus to be issued. *Young v. Norris*, 365 Ark. 219, 226

[2]Appellant was charged by citation with driving while intoxicated, failure to yield to an emergency vehicle, driving without a license and reckless driving.

S.W.3d 797 (2006) (per curiam). Appellant failed to demonstrate entitlement to habeas relief.

Appeal dismissed; motions moot.